

1 THOMAS D. ROTH, CAL. BAR NO. 208601
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8 Attorney for Plaintiff
9 FRIENDS OF OCEANO DUNES, INC.

E-filing

10 UNITED STATES DISTRICT COURT

11 FOR THE NORTHERN DISTRICT OF CALIFORNIA

12 SAN FRANCISCO DIVISION

13 FRIENDS OF OCEANO DUNES, INC.,
14 Plaintiff,

15 vs.

16 U.S. DEPARTMENT OF THE INTERIOR, the
17 UNITED STATES FISH AND WILDLIFE
18 SERVICE, KEN SALAZAR, in his official
19 capacity as Secretary of the Interior; and
20 DANIEL M. ASHE, in his official capacity as
21 Director, U.S. Fish and Wildlife Service,

22 Defendants,

**COMPLAINT RE FAILURE TO
PRODUCE RECORDS IN
VIOLATION OF THE
FREEDOM OF INFORMATION ACT**

23 1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552
24 ("FOIA"), to order the Department of Interior and/or the U.S. Fish and Wildlife Service to
25 produce responsive records pursuant to two FOIA requests submitted by and on behalf of
26 FRIENDS OF OCEANO DUNES, INC. Federal Defendants are unlawfully withholding
27 96 responsive records.
28

Jurisdiction and Venue

2. This Court has jurisdiction over this action pursuant to the Freedom of Information Act, 5 U.S.C. § 552, and 28 U.S.C. § 1331 (federal question jurisdiction). Venue lies in this district under 5 U.S.C. § 552(a)(4)(B). The records being withheld are held principally in the Arcata, California office of the U.S. Fish and Wildlife Service and the letter refusing production of the records was written by that office.

Parties

3. Plaintiff, the FRIENDS OF OCEANO DUNES, Inc., is a California not-for-profit corporation, focused on preserving public recreational opportunities at Oceano Dunes State Vehicular Area near Pismo Beach, California.

4. Defendants, the Department of the Interior and the U.S. Fish and Wildlife Service are agencies of the United States and have possession of the documents that Plaintiff seeks. They each are required by law to comply with FOIA. Defendants Ken Salazar and Rowan Gould are the respective heads of those agencies, and, in that capacity, have ultimate responsibility for complying with FOIA. They are each sued in their respective official capacity.

Claims

5. When a FOIA request is submitted, an agency shall make records “promptly available.” 5 U.S.C. § 552(a)(3).

6. By letter dated **December 21, 2010**, FRIENDS submitted a written FOIA request seeking access to documentation related to a U.S. Fish and Wildlife Service (FWS)

1 proposed rule-making regarding the designation of critical habitat for a specific threatened
2 species. A copy of this letter is attached as Exhibit 1.

3 7. By letter dated December 23, 2010, FWS acknowledged receipt of the
4 FRIENDS' FOIA request.
5

6 8. On February 16, 2011, FRIENDS submitted a second written "gap" FOIA
7 request, seeking the same documents for the period December 23, 2010 through February
8 16, 2011. A copy of this letter is attached as Exhibit 2.
9

10 9. By letters dated February 15, 2011 and April 6, 2011, FRIENDS tendered
11 UNDER PROTEST AND WITH A RESERVATION OF ALL RIGHTS all amounts
12 requested by FWS as payment for the records and search costs.

13 10. On August 15, 2011, FWS, after producing some records, issued a letter stating
14 that additional responsive records had been located and were being produced. A copy of
15 this letter is attached as Exhibit 3. The FWS letter also stated that **96 records were being**
16 **withheld** for review by an Interior Department Solicitor. To date, those 96 documents
17 have not been produced and FWS has cited no lawful basis for withholding them.
18
19

20 11. 43 C.F.R. § 2.28 authorizes the filing of an administrative appeal to Interior
21 when a record request is denied. On September 2, 2011, FRIENDS filed and caused to be
22 served by a process server a timely administrative appeal of Interior/FWS's denial.
23 Included in the denial was the contention that the 96 documents were being unlawfully
24 withheld.
25

26 12. Under Interior/FWS regulations, the agency must issue a decision on the FOIA
27 administrative appeal within **20 business days of the filing**. 43 CFR § 2.32 (a) states
28

1 “The statutory time limit for responding to an appeal is 20 workdays after receipt of an
2 appeal” See also § 552(a)(6)(A)(ii). Twenty work days after September 2, 2011 is
3 October 3, 2011. As of the date of this Complaint, the undersigned counsel received no
4 decision from Interior/FWS regarding the administrative appeal. Thus, more than 30 work
5 days have elapsed without a response.
6

7 13. 43 C.F.R. § 2.32 (c) provides that “in the event that the Department is unable
8 to reach a decision within the given time limits, the FOIA Appeals Officer will notify you
9 of the reason for the delay and the right to seek judicial review.” Interior/FWS failed to
10 provide any such notification to the undersigned counsel.
11

12 14. 43 C.F.R. § 2.32 (c) also provides “if you have not received a decision on your
13 appeal within 20 workdays, you have the right to seek review in a District Court of the
14 United States.” FRIENDS is pursuing that legal right with this action.
15

16 15. FOIA states that a requester “shall be **deemed to have exhausted** his
17 administrative remedies . . . if the agency fails to comply with the applicable time limit
18 provisions.” 5 U.S.C. § 552(a)(6)(C)(i). Since Interior/FWS have failed to act in a timely
19 manner on FRIENDS’ administrative appeal, FRIENDS, by operation of law, is deemed to
20 have exhausted its administrative remedies fully and need not await further action by
21 Interior/FWS. Any subsequent administrative ruling by Interior/FWS will be of no force
22 and effect. FRIENDS thus challenges the denial to release records by the U.S. Fish and
23 Wildlife Service in Arcata, California.
24
25

26 16. FOIA requires the FWS to state the reasons for withholding documents but it
27 failed to provide any lawful reason in this case. Under FOIA, the federal agency is
28

1 required to "immediately notify the person making such request of such determination and
2 the reasons therefore... ." 5 U.S.C. § 552(a)(6)(A)(i). FWS's refusal to provide responsive
3 records for any reason other than one of the enumerated statutory exemptions constitutes
4 unlawful withholding. See 5 U.S.C. § 552(c) ("This section does not authorize
5 withholding of information or limit the availability of records to the public, except as
6 specifically stated in this section.")
7

8 17. Since the FWS has failed to release the 96 records and has not stated that the
9 documents are exempt from disclosure (and has failed to demonstrate that any exemption
10 applies), FWS is withholding these records unlawfully in violation of FOIA.
11

12 18. By failing to respond in a timely manner to FRIENDS' administrative appeal,
13 FWS has waived any claim of exemption with respect to the 96 records being withheld.
14

15 19. FOIA provides that a federal district court "has jurisdiction to enjoin the agency
16 from withholding agency records and to order the production of any agency records
17 improperly withheld" § 552(a)(4)(B).
18

19 20. Through this action, Friends demands that the 96 records be produced
20 immediately.
21

22 21. Alternatively, in the event that the Court declines to find waiver, Friends
23 demands that FWS provide a detailed account for each record being withheld explaining
24 why it has not been produced.

25 **Prayer**

26 WHEREFORE, Plaintiff requests that this Court:
27
28

- 1 (1) Issue a Ruling finding the Interior/FWS record denial unlawful under
2 FOIA;
3
4 (2) Issue a Ruling that Interior/FWS has waived any claim of exemption;
5
6 (3) Issue an Order to Interior/FWS requiring them to produce the 96 records
7 being withheld without stated justification;
8
9 (4) Alternatively, issue an Order to Interior/FWS requiring them to produce
10 an index detailing the basis for withholding each of the records;
11
12 (5) Award plaintiff costs and reasonable attorneys fees in this action, as
13 provided in FOIA (see, e.g., 5 U.S.C. § 552(a)(4)(E)); and
14
15 (6) Grant such other and further relief as may deem just and proper.

16 Dated October 19, 2011

17 Respectfully submitted,

18 /s/

19 _____
20 Thomas D. Roth
21 Law Offices of Thomas D. Roth
22 One Market, Spear Tower, Suite 3600
23 San Francisco, California 94105
24 (415) 293-7684

25 Attorneys for
26 Plaintiff Friends of Oceano Dunes, Inc.
27
28

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December 21, 2010

By Email: Patti_Carroll@fws.gov
Patti Carroll, FOIA Coordinator
Budget and Administration
Eastside Federal Complex
911 NE 11th Ave.
Portland, OR 97232-4181
Phone: 503-231-2072 / Fax: 503-231-6259

**Re: Freedom of Information Act Request/Fee Waiver
Request**

Dear Ms. Carroll:

This firm represents the Friends of Oceano Dunes ("Friends"), a California not-for-profit corporation, representing approximately 28,000 members and users of the Oceano Dunes State Vehicular Recreation Area located near Pismo Beach, California.

Pursuant to the Freedom of Information Act (FOIA) and Department of Interior FOIA regulations, Friends hereby requests copies of the following documents in your possession or control:

(1) Any and all documents used, relied upon or considered in the U.S. Fish & Wildlife Service's development of a proposed rule designating critical habitat for the Pacific coast population of the western snowy plover. I am not interested in materials relied upon to prepare previous plover critical habitat rules (in 1999 and 2005), except for those materials from those rule-making efforts in which the FWS is

December 21, 2010

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relying on in its current effort to re-designate plover critical habitat.

(2) All population survey data for the western snowy plover since 2000, or memos and correspondence discussing such data.

(3) All documents related to the proposed 4(d) rule for the western snowy plover.

Fee Category.

The fee category for Friends is the "other requesters." [43 C.F.R. Part 2 § 2.17 (a)(4)]

Friends Requests A Fee Waiver.

The statutory requirement under FOIA mandates a waiver or fee reduction for requests when the release of the information is in the public interest because disclosure is "likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." [5 U.S.C. § 552(a)(4)(A)(iii)]

To determine whether a fee waiver request satisfies the statutory public interest test of 5 U.S.C. § 552(a)(4)(A)(iii), the Department of Interior has fee waiver criteria in 43 C.F.R Appendix D to Part 2 (Appendix D). As stated in Appendix D (b): "In deciding whether you are entitled to a fee waiver, the bureau will consider the criteria in paragraphs (1) through (4), below. Your request for a fee waiver must address each of these criteria." When the requester is a noncommercial entity like Friends, Congress intended the courts to "liberally construe the fee waiver requests" such that if satisfaction of one of the prongs or criterion of the fee waiver standard is a "close question," the requester that is a noncommercial entity "should get the benefit of the doubt." [*Forest Guardians v.*

December 21, 2010

- 3 -

U.S. Department of the Interior, 416 F.3d 1173 (10th. Cir. 2005); See also, *McKellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th. Cir. 1987)]

Friends satisfies each of the 4 criteria of the FOIA fee waiver standard. [*Stewart v. U.S. Department of the Interior*, 554 F.3d 1236 (10th. Cir. 2009); See also, *Forest Guardians v. U.S. Department of the Interior*, 416 F.3d 1173 (10th. Cir. 2005)]

(1) Our requested records concern the operations or activities of government. It is clear that documents used, considered or relied upon by a federal agency when developing a proposed rule to designate critical habitat is a request for records concerning the operations or activities of government.

(2) Our requested records contribute to the public understanding of government operations and activities. The release of the requested records is likely to contribute significantly to public understanding of the operations or activities of the federal government. Friends retained Tom Roth to obtain and digest the requested information about the designation of critical habitat to ensure that the rule is promulgated in a fair and balanced manner that does not unfairly impact the users of Oceano Dunes State Vehicular Recreation Area. There is a logical connection between the content of the records and public understanding of the operations or activities of government.

Friends intends to disseminate information obtained regarding the plover critical habitat rule-making to its extensive membership (approximately 28,000 members and users of Oceano Dunes) and the public through its website (<http://www.oceanodunes.org/>) and/or email that can alert the this large group to the agency's most recent activities on the plover habitat-rule making as discovered by this FOIA request. Thus, disclosure of the requested records will contribute both to the understanding by a reasonably broad audience of persons interested in the critical habitat designation for the western snowy plover.

December 21, 2010

- 4 -

As an attorney who has represented numerous clients in administrative matters and litigation on agency rule-makings related to the plover and having obtained a voluntary remand, as well as numerous economic exclusions related to plover critical habitat designations, Tom Roth is qualified to understand, analyze and digest the information contained in the requested public records in a manner to increase public awareness and the awareness of Friends' members and Oceano Dunes' users.

(3) Release of the documents will contribute significantly to the public understanding. The requested documents seek new information used by FWS in its rule-making that has not been previously relied upon for past plover critical habitat rule-makings. Our FOIA request also seeks to confirm what past data the FWS will use or rely upon for this current rule-making for critical habitat. [See *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284-1286 (9th. Cir. 1987).] Disclosure of this information will contribute to Oceano Dunes' users' understanding of the plover critical habitat designation because they typically do not have the time or ability to ferret out the agency's activities that ultimately end up directly affecting their recreational interests. Dissemination of this information to Oceano Dunes users and Friend's members benefits this large group by educating them about this governmental action so that Friends or individual users may object, protest or file litigation against the FWS to challenge the proposed rule if necessary. [See *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 143 n. 10 (1975).]

(4) Disclosure of the records is not in the requester's commercial interest. Friends is a California non-profit corporation with no commercial interest in any rule-making concerning the western snowy plover. It has no commercial interest in the information sought but with respect to plover critical habitat rule-making has taken on a role as a watchdog public advocacy organization. The purpose of the fee waiver provision is to enable nonprofit public interest groups to obtain government documents so that they are not excluded from monitoring government actions.

**LAW OFFICES OF THOMAS D. ROTH
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February 16, 2011

By Fax

Patti Carroll, FOIA Coordinator
Budget and Administration
Eastside Federal Complex
911 NE 11th Ave.
Portland, OR 97232-4181
Phone: 503-231-2072 / Fax: 503-231-6259

**Re: Freedom of Information Act Request/Fee Waiver
Request**

Dear Ms. Carroll:

This firm represents the Friends of Oceano Dunes ("Friends"), a California not for-profit corporation, representing approximately 28,000 members and users of the Oceano Dunes State Vehicular Recreation Area located near Pismo Beach, California. The critical habitat designation referenced in our Freedom of Information Act ("FOIA") request may impact recreational opportunities for Friends' 28,000 members and users of the Oceano Dunes State Vehicular Recreation Area. Friends is a public watchdog organization that has been monitoring the rule-makings that might affect this state park.

Documents Requested.

Pursuant to the FOIA and Department of Interior FOIA regulations, Friends hereby requests copies of the following documents in your possession or control:

(1) Any and all documents used, relied upon or considered in the U.S. Fish & Wildlife Service's development of a proposed rule designating critical habitat for the Pacific coast population of the western snowy plover. I am not interested in materials relied upon to prepare previous plover critical habitat rules (in 1999 and

2005), except for those materials from those rule-making efforts in which the FWS is relying on in its current effort to re-designate plover critical habitat.

(2) All population survey data for the western snowy plover since 2000, or memos and correspondence discussing such data.

(3) All documents related to the proposed 4(d) rule for the western snowy plover.

This request is for documents in all of the aforementioned three categories but is limited to the time period of December 22, 2010 to February 15, 2011. In other words, this a "gap" request to ensure Friends' obtains all documents not otherwise being produced pursuant to Friends' December 2010 request.

Fee Category.

The fee category for Friends is the "other requesters." [43 C.F.R. Part 2 § 2.17 (a)(4)]

Friends Requests A Fee Waiver.

The statutory requirement under FOIA mandates a waiver or fee reduction for requests when the release of the information is in the public interest because disclosure is "likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." [5 U.S.C. § 552(a)(4)(A)(iii)]

To determine whether a fee waiver request satisfies the statutory public interest test of 5 U.S.C. § 552(a)(4)(A)(iii), the Department of Interior has fee waiver criteria in 43 C.F.R Appendix D to Part 2 (Appendix D). As stated in Appendix D (b): "In deciding whether you are entitled to a fee waiver, the bureau will consider the criteria in paragraphs (1) through (4), below. Your request for a fee waiver must address each of these criteria." When the requester is a noncommercial entity like Friends, Congress intended the courts to "liberally construe the fee waiver requests" such that if satisfaction of one of the prongs or

criterion of the fee waiver standard is a "close question," the requester that is a noncommercial entity "should get the benefit of the doubt." [*Forest Guardians v. U.S. Department of the Interior*, 416 F.3d 1173 (10th. Cir. 2005); See also, *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th. Cir. 1987)]

Friends satisfies each of the 4 criteria of the FOIA fee waiver standard. [*Stewart v. U.S. Department of the Interior*, 554 F.3d 1236 (10th. Cir. 2009); See also, *Forest Guardians v. U.S. Department of the Interior*, 416 F.3d 1173 (10th. Cir. 2005)]

(1) Our requested records concern the operations or activities of government. It is clear that documents used, considered or relied upon by a federal agency when developing a proposed rule to designate critical habitat is a request for records concerning the operations or activities of government.

(2) Our requested records contribute to the public understanding of government operations and activities. The release of the requested records is likely to contribute significantly to public understanding of the operations or activities of the federal government. Friends retained Tom Roth to obtain and digest the requested technical and regulatory information about the designation of critical habitat to ensure that the rule is promulgated in a fair and balanced manner that does not unfairly impact the users of Oceano Dunes State Vehicular Recreation Area, or members of Friends. There is a logical connection between the content of the records and public understanding of the operations or activities of government.

Friends intends to disseminate information obtained regarding the plover critical habitat rule-making to its extensive membership (approximately 28,000 members and users of Oceano Dunes) and the public through its website (<http://www.oceanodunes.org/>) and/or email alerts to make park users and members aware of the agency's most recent activities on the plover habitat-rule making as discovered by this FOIA request. Thus, disclosure of the requested records will contribute to the understanding by a reasonably broad audience of persons and the public interested in the critical habitat designation for the western snowy plover.

Friends also retained Roth to use his expertise and experience to assist their

watchdog functions on behalf of the public and a reasonably broad audience of interested persons. As an attorney who has represented numerous clients in administrative matters and litigation on agency rule-makings related to the plover and having obtained a voluntary remand, as well as numerous economic exclusions related to plover critical habitat designations, Tom Roth is qualified to understand, analyze and digest the information contained in the requested public records in a manner to increase public awareness and the awareness of Friends' members and Oceano Dunes' users who are interested in the critical habitat designation for the western snowy plover. Friends' board members also have years of experience in reviewing and analyzing plover conservation programs and regulations and indeed have assisted State Parks with its very successful plover conservation program at Oceano Dunes.

The objective of this factor is a *contribution to the understanding* of a segment of the public – it does not require or mandate that a certain percentage of the public will receive this information. As stated in *Carney v U.S. Dep't of Justice*, 19 F.3d 807, 815 (2nd Cir. 1994), the relevant inquiry is whether Friends will "disseminate the disclosed records to a *reasonably broad audience of persons interested in the subject*:"

"As we understand the DOJ's position, no fee waiver would be granted to one unable to shoulder the formidable burden of demonstrating that any records released actually will be disseminated to a large cross-section of the public. This position is not realistic. **Information need not actually reach a broad cross-section of the public in order to benefit the public at large. . . . The relevant inquiry, as we see it, is whether the requester will disseminate the disclosed records to a reasonably broad audience of persons interested in the subject.**" (bold emphasis added)

Similarly, Friends has an important role of watchdog organization for our democracy by working on behalf of the public to protect and monitor our public recreational parks and government activities affecting the parks. It is undeniable that distribution of the requested information to up to 28,000 members of an organization whose members use and support public recreational parks would be interested in the

records relating to critical habitat of the western snowy plover that might impact those recreational opportunities constitutes "a reasonably broad audience of persons interested in the subject."

As a public watchdog organization, Friends also provides insight, guidance and information on issues of import to its 28,000 members, such as the requested records that can impact their recreational opportunities, and to the public at-large, including the FWS. Request #1 references the 2005 final rule to re-designate critical habitat for the Western Snowy Plover along the coast of California. This final rule was published in the Federal Register. [70 Federal Register 56970 (online link available here <http://www.fws.gov/arcata/es/birds/wsp/plover.html>)] Friends sought and was provided FOIA documents related to the 2005 ruling and was granted a fee waiver. Friends used the FOIA documents disclosed to it to provide numerous comments on this rule making that were published in the Federal Register and the FWS responded to these comments submitted by Friends. It was the fee waiver for the 2005 FOIA request that enabled these comments that contributed to the public understanding and discussion contained in the 2005 rule-making. Friends would contribute in a similar way here.

(3) Release of the documents will contribute significantly to the public understanding. The requested documents seek new information that is used by FWS in its rule-making which has not been previously relied upon for past plover critical habitat rule-makings. Our FOIA request also seeks to confirm what past data the FWS will use or rely upon for this current rule-making for critical habitat. [See *McClellanEcological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284-1286 (9th. Cir. 1987).] Disclosure of this information will contribute to Oceano Dunes users' understanding of the plover critical habitat designation because they typically do not have the time or ability to ferret out the agency's activities that ultimately end up directly affecting their recreational interests. Dissemination of this information to Oceano Dunes users and Friend's members benefits this large group by educating them about this governmental action so that Friends or individual users may object, protest or file litigation against the FWS to challenge the proposed rule if necessary. [See *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 143 n. 10 (1975).]

(4) Disclosure of the records is not in the requester's commercial interest.

Friends is a California non-profit corporation with no commercial interest in any rule-making concerning the western snowy plover. It has no commercial interest in the information sought but with respect to plover critical habitat rule-making has taken on a role as a watchdog public advocacy organization. The purpose of the fee waiver provision is to enable nonprofit public interest groups to obtain government documents so that they are not excluded from monitoring government actions.

[*Better Gov't Ass'n v. Department of State*, 780 F.2d 86, 93-94 (D.C. Cir. 1986)]

Congress recognized that it is in the public interest for under-funded organizations and individuals to have access to government documents to enable critical monitoring of government actions. [*Coalition for Safe Power v. U.S. Dep't of Energy*, Civ. No. 87-1380PA, slip op. at 7 (D.Or. July 22, 1988) (citing *Better Gov't Ass'n v. Department of State*, 780 F.2d 86, 94 (D.C. Cir. 1986))]

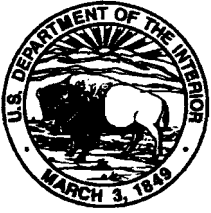
“Indeed, experience suggests that agencies are most resistant to granting fee waivers when they suspect that the information sought may cast them in a less than flattering light or may lead to proposals to reform their practices. Yet that is precisely the type of information which the FOIA is supposed to disclose, and agencies should not be allowed to use fees as an offensive weapon against requesters seeking access to Government information....” 132 Cong. Rec. S14298 (Sen. Leahy).

In the event that a fee waiver is denied, Friends is willing to pay up to \$ 200 under protest with full reservation of its rights, including appeal.

Thank you in advance for your timely attention to this matter.

Sincerely,

Tom Roth



United States Department of the Interior



FISH AND WILDLIFE SERVICE

Arcata Fish and Wildlife Office

1655 Heindon Road

Arcata, California 95521

Phone: (707) 822-7201 FAX: (707) 822-8411

In Reply Refer To:
FWS-2011-00274

AUG 15 2011

Mr. Thomas D. Roth
One Market, Spear Tower, Suite 3600
San Francisco, California 94105

Subject: Freedom of Information Act Request Regarding Pacific Coast Population of the Western Snowy Plover Critical Habitat and 4(d) Rule

Dear Mr. Roth:

This letter is in response to your Freedom of Information Act (FOIA) request representing the Friends of Oceano Dunes. Two identical requests, received on December 23, 2010, and on February 16, 2011, were combined. You requested:

- 1. Any and all documents used, relied upon or considered in the U.S. Fish and Wildlife Service's development of a proposed rule designating critical habitat for the Pacific coast population of the western snowy plover. I am not interested in materials relied upon to prepare previous plover critical habitat rules (in 1999 and 2005), except for those materials for those rule-making efforts in which the FWS is relying on its current effort to re-designate plover critical habitat.*
- 2. All population survey data for the western snowy plover since 2000, or memos and correspondence discussing such data.*
- 3. All documents related to the proposed 4(d) rule for the western snowy plover.*

By letter dated April 4, 2011, the Service provided you with 1763 responsive documents and a disk containing GIS shape files and supporting information. In that transmittal, the Service informed you that 42 documents had been submitted for Solicitor review.

TAKE PRIDE[®]
IN AMERICA 

Mr. Thomas D. Roth - Freedom of Information Act Request (FWS-2011-00274)

2

In a letter dated August 5, 2011, you received the result of the Solicitor's review of documents. A compact disk (CD), containing 8 documents released in full and 14 documents withheld in part, was sent to you August 8, 2011.

In the most recent letter, you were also informed that additional documents had been located. A CD containing 564 documents responsive to your request is enclosed with this letter. Ninety-six documents are under review by a Solicitor. You will receive the outcome of that review when it is completed.

If you consider this response to be a denial of your request under CFR §2.28(a)(2), you have the right to appeal the results of our response to this FOIA request by writing to:

Freedom of Information Act Appeals Officer
Department of the Interior
Office of the Solicitor
1849 C Street, NW, MS 6556
Washington, DC 20240

The FOIA Appeals Officer must receive your appeal no later than 30 work days from the date of this letter responding to your FOIA request appeal. Appeals arriving or delivered after 5 p.m. E.T., Monday through Friday, will be deemed received on the next workday. You must include with your appeal, copies of all correspondence between you and the Fish and Wildlife Service concerning your FOIA request and subsequent appeal, including a copy of your original FOIA request, your appeal, and this delay letter. Failure to include this documentation with your appeal will result in the Department's rejection of your appeal. The appeal should be marked, both on the envelope and the face of the letter, with the legend, "FREEDOM OF INFORMATION APPEAL." Your letter should include, in as much detail as possible, any reason(s) why you believe the Service's response is in error.

As part of the 2007 FOIA amendments, the Office of Government Information Services (OGIS) was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. You may contact OGIS in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
Room 2510
8601 Adelphi Road
College Park, MD 20740-6001
E-mail: ogis@nara.gov
Telephone: 301-837-1996
Facsimile: 301-837-0348
Toll-free: 1-877-684-6448

Mr. Thomas D. Roth - Freedom of Information Act Request (FWS-2011-00274)

3

If you have any questions, please contact our FOIA Officer, Susan Neel-Goodsir at the address or telephone number above.

Sincerely,

A handwritten signature in black ink, appearing to read "Nancy J. Finley". The signature is fluid and cursive, with the first name "Nancy" being more prominent.

Nancy J. Finley
Field Supervisor

cc:

FOIA Coordinator, Regions 1 and 8, Portland, Oregon